

# Proposed Rules

Federal Register

Vol. 74, No. 48

Friday, March 13, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1005 and 1007

[Doc. Nos. AMS-DA-07-0133; AO-388-A15; AO-366-A44; DA-03-11-B]

#### Milk in the Appalachian and Southeast Marketing Areas; Order To Terminate Proceeding on Proposed Amendments to Marketing Agreements and Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Termination of proceeding.

**SUMMARY:** This action terminates a rulemaking proceeding on two proposed amendments that sought to amend the producer-handler provisions of the Appalachian and Southeast milk marketing orders. Other proposed amendments considered as part of the rulemaking proceeding were addressed in previously issued decisions.

**FOR FURTHER INFORMATION CONTACT:**

Gino M. Tosi, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, STOP 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@ams.usda.gov](mailto:gino.tosi@ams.usda.gov), mail to: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This action terminates the rulemaking proceeding concerning proposed amendments to the producer-handler provisions of the Appalachian and Southeast orders. The proposals were considered at a public hearing held February 23-26, 2004. Other proposed amendments considered at the public hearing were addressed in a partial recommended decision issued May 13, 2005, and published May 20, 2005 (70 FR 29410), and a partial final decision issued September 15, 2005, and

published September 21, 2005 (70 FR 55458). A partial final rule was published October 12, 2005 (70 FR 59221), making the amendments adopted in these decisions effective November 1, 2005.

#### Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Producer-handlers are defined as dairy farmers that process only their own milk production. These entities must be dairy farmers as a pre-condition to operating processing plants as producer-handlers. The size of the dairy farm determines the production level of the operation and is the controlling factor in the capacity of the processing plant and possible sales volume associated with the producer-handler entity. Determining whether a producer-handler is considered a small or large business must depend on its capacity as a dairy farm where a producer-handler with annual gross revenue in excess of \$750,000 is considered a large business.

During February 2004, the month the hearing was held, the milk of 7,311 dairy farmers was pooled on the Appalachian (Order 5) and Southeast (Order 7) milk orders (3,395 Order 5

dairy farmers and 3,916 Order 7 dairy farmers). Of the total, 3,252 dairy farmers (or 96 percent) and 3,764 dairy farmers (or 96 percent) were considered small businesses on the Appalachian and Southeast orders, respectively.

During February 2004, there were a total of 36 plants associated with the Appalachian order (25 fully regulated plants, 7 partially regulated plants, 1 producer-handler, and 3 exempt plants) and a total of 51 plants associated with the Southeast order (32 fully regulated plants, 6 partially regulated plants, and 13 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 13 (or 36 percent) and 13 (or 25 percent), respectively.

Two proposals that would amend the producer-handler provisions of the Appalachian and Southeast orders were considered at the public hearing. A proposal published in the hearing notice as Proposal 7 sought to apply the pooling and pricing provisions of the Southeast or Appalachian orders to producer-handlers with more than 3 million pounds of fluid route disposition during the month. A dairy farmer who is a producer-handler with fluid route disposition above the proposed 3-million pounds per month threshold would be considered a "large" business.

A second proposal published in the hearing notice as Proposal 8 sought to allow producer-handlers to purchase a limited amount of supplemental milk without losing their status as producer-handlers. As proposed, a producer-handler would be allowed to purchase up to 10 percent of the producer's monthly milk production during the months of December through May, and 30 percent during the months of June through November from other sources.

Because this action terminates the rulemaking proceeding without amending the existing rules applicable to producer-handlers in the Appalachian and Southeast orders, the economic conditions of small entities remain unchanged. This action does not change reporting, record keeping, or other compliance requirements.

*Prior documents in this proceeding:*

*Notice of Hearing:* Issued January 16, 2004; published January 23, 2004 (69 FR 3278).

*Partial Recommended Decision:* Issued May 13, 2005; published May 20, 2005 (70 FR 29410).

*Partial Final Decision:* Issued September 15, 2005; published September 21, 2005 (70 FR 55458).

*Partial Final Rule:* Issued October 7, 2005; published October 12, 2005 (70 FR 59221).

### Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), at Atlanta, Georgia, on February 23–26, 2004, pursuant to a notice of hearing issued January 16, 2004, and published in the **Federal Register** on January 20, 2004 (69 FR 3278).

### Producer-Handler Provisions

This action terminates the rulemaking proceeding concerning proposed amendments to the producer-handler provisions of the Appalachian and Southeast orders. A proposal published in the hearing notice as Proposal 7 sought to apply the Appalachian and Southeast orders' pooling and pricing provisions to producer-handlers with fluid route disposition in excess of 3 million pounds per month. A second proposal, published in the hearing notice as Proposal 8, sought to allow producer-handlers to purchase up to 10 percent of the producer's monthly milk production during December through May and 30 percent during June through November from other sources.

The Appalachian and the Southeast milk orders provide identical definitions that describe and define a category of handlers known as producer-handlers. Both orders require producer-handlers to operate their businesses at their own enterprise and risk, meaning that the care and management of the dairy animals and other resources necessary for the production, processing, and distribution of fluid milk products are the sole responsibility of the handler.

The Appalachian and Southeast orders prohibit producer-handlers from purchasing any amount of supplemental milk from pool sources or from any other source. Producer-handlers bear the entire burden of balancing their own milk production. Any fluctuation in a producer-handler's daily and seasonal milk needs must be met through their own farm production and any excess

milk supplies must be disposed of at their own expense.

Producer-handlers are exempt from the pooling and pricing provisions of the Appalachian and Southeast orders. Exemption from the pooling and pricing provisions of the orders means that the minimum class prices established under the orders that handlers must pay for milk are not applicable to producer-handlers, and producer-handlers receive no minimum price protection for their milk production not disposed of for fluid uses.

While producer-handlers are exempt from the pooling and pricing provisions of the Appalachian and Southeast orders, they are required to submit reports to the Market Administrator who monitors producer-handler operations to ensure that they are in compliance with the conditions for such exemption status.

The Secretary is in the process of receiving proposals to initiate a new rulemaking proceeding to consider the elimination of the producer-handler provision in all Federal milk marketing orders. Two such proposals have been received and the Secretary has invited the submission of additional proposals. Such proposals must be received by Dairy Programs by March 16, 2009. (See Dairy Programs Web site at <http://www.ams.usda.gov/dairy>.)

Given this development and the substance of the two proposals considered herein, the review of the producer-handler exemption under all Federal milk marketing orders would be a more comprehensive review. Therefore, the Secretary has determined that this rulemaking proceeding should be terminated.

### Termination of Proceeding

In view of the foregoing, it is hereby determined that the proceeding with respect to proposed amendments to the Appalachian and Southeast orders regarding the regulation of producer-handlers should be and is hereby terminated.

### List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

The authority citation for 7 CFR Parts 1005 and 1007 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

Dated: March 9, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9–5414 Filed 3–12–09; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 320

RIN 3084-AA99

### Disclosures for Non-Federally Insured Depository Institutions under the Federal Deposit Insurance Corporation Improvement Act (FDICIA)

**AGENCY:** Federal Trade Commission (FTC or Commission).

**ACTION:** Supplemental notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) directs the Commission to prescribe the manner and content of certain mandatory disclosures for depository institutions that lack federal deposit insurance. On March 16, 2005, the Commission published a notice of proposed rulemaking (NPRM) seeking comment on disclosure rules for such institutions. Subsequently, Congress passed the Financial Services Regulatory Relief Act of 2006 (FSRRA), which amended FDICIA's requirements. To ensure that the FTC's requirements are consistent with the FSRRA amendments, the Commission is seeking comment on conforming changes to the proposed Rule.

**DATES:** Written comments must be received on or before June 5, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to “Supplemental Proposed Rule for FDICIA Disclosures, Matter No. R411014” to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (<http://www.ftc.gov/os/publiccomments.shtml>) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any “[t]rade secrets and commercial or financial information obtained from a